

1 Daniel D. Maynard, No. 009211  
2 **MAYNARD CRONIN ERICKSON &**  
3 **CURRAN, P.L.C.**  
4 3200 North Central Avenue, Suite 1800  
5 Phoenix, Arizona 85012  
6 (602) 279-8500  
7 [dmaynard@mmcec.com](mailto:dmaynard@mmcec.com)

8 Daniel R. Drake, No.003781  
9 **DRAKE LAW, PLC**  
10 4340 East Indian School Road, Suite 21-113  
11 Phoenix, Arizona 85018  
12 (602) 881-5341  
13 [drakelawplc@gmail.com](mailto:drakelawplc@gmail.com)

14 Attorneys for Defendant

15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF ARIZONA**

17 United States of America,  
18 Plaintiff/Respondent,  
19 v.  
20 Abdul Malik Abdul Kareem,  
21 Defendant/Movant.

2:15-cr-00707-SRB

22 **MOTION TO COMPEL**  
23 **DISCLOSURE RE RE-SENTENCING**

24 Defendant Abdul Malik Abdul Kareem (“Mr. Kareem”) moves the Court to  
25 compel production by the government of items requested by the defense by letter of April  
26 1, 2021, as that information is relevant and material to the defense of re-sentencing Mr.  
27 Kareem. The motion is supported and explained by the attached memorandum.

28 Excludable delay under 18 U.S.C. § 3161(h) will not occur as a result of this notice  
or an order based thereon.

1 Respectfully Submitted this 10<sup>th</sup> day of September 2021.

2  
3 **MAYNARD CRONIN ERICKSON &**  
4 **CURRAN, P.L.C.**

5 By /s/Daniel D. Maynard  
6 Daniel D. Maynard  
7 3200 North Central Avenue, Ste. 1800  
8 Phoenix, Arizona 85012  
9 Attorneys for Defendant

10 **DRAKE LAW, PLC**

11 By /s/Daniel R. Drake  
12 Daniel R. Drake  
13 4340 East Indian School Road  
14 Suite 21-113  
15 Phoenix, Arizona 85018  
16 Attorney for Defendant

17 **MEMORANDUM**

18 **1. Overview**

19 On June, 15, 2020, the government produced 28 pages of information regarding  
20 allegations that Mr. Kareem wanted to kill the prosecutors and defense attorneys on his  
21 case. An additional 35 pages were disclosed on July 22, 2020. Recently the government  
22 stated it plans to call as witnesses at sentencing three individuals who apparently were  
23 prisoners with Mr. Kareem, who provided the information concerning the alleged scheme,  
24 but the government refuses to identify those potential witnesses or produce information  
25 that could be used to impeach its witnesses.

1 On April 1, 2021, Mr. Kareem requested information regarding the government's  
2 proposed witnesses, as set forth in the attached letter. He sought information about the  
3 proposed witnesses so that he might prepare to cross-examine and impeach the  
4 government's proposed witnesses, whoever they are. To date the government has  
5 refused to disclose the identities of the proposed witnesses nor has it produced anything  
6 in response to the defense request.  
7

8 The prosecution and defense have discussed the government's concern about  
9 concealing the identity of its proposed witnesses. They have discussed a protective  
10 order. However, those discussions have been fruitless. The government insists it must  
11 conceal the identity of its proposed witnesses until the last possible moment. This  
12 position puts the defense in an untenable position and may likely upset the Court's  
13 efforts to conclude the re-sentencing on October 19-20, 2021.  
14

15 Under the Fifth Amendment a defendant in a criminal case is entitled to due  
16 process of law.<sup>1</sup> A fundamental aspect of due process is the right to fair notice of the  
17 charges and evidence to be used against him. Limitation on those rights are  
18 scrupulously protected.  
19  
20  
21  
22

---

23 <sup>1</sup> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a  
24 presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces,  
25 or in the Militia, when in actual service in time of War or public danger; nor shall any person  
26 be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be  
27 compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty,  
28 or property, without due process of law; nor shall private property be taken for public use,  
without just compensation.

1 Under the Sixth Amendment, the defendant is entitled confronted the witnesses  
2 against him; to have compulsory process for obtaining witnesses in his favor, and to  
3 have the Assistance of Counsel for his defense.<sup>2</sup> We are a little more than thirty (30)  
4 days from the re-sentencing hearing and the government has produced nothing in the  
5 last 14 months. The defense still has not been told who the government witnesses are  
6 or any details that would allow the defense to challenge their testimony or defend Mr.  
7 Kareem effectively. This situation deprives Mr. Kareem of the assistance of counsel.  
8 Instead, his defense counsel are limited by the government in terms of what it chooses  
9 to produce, with little time for the defense to investigate what the government chooses  
10 to produce and the witnesses it chooses to call at the re-sentencing.

## 13 **2. The Nature of the Request and the Pattern of Government Conduct** 14 **Warrants Compelling the Requested Disclosures**

15 There is a history of belated disclosures in this case, which includes the government's  
16 failure to disclose that an FBI agent witnessed the incident at Garland, Texas and had  
17 been in communication with Mr. Simpson before the attack occurred. Additionally, the  
18 government failed to timely disclose that Mr. Simpson had been under surveillance for  
19 weeks before the Garland attack and was never seen with Mr. Kareem. That the  
20 government had a pole camera filming on the entrance to Mr. Simpson's apartment  
21  
22

---

23  
24 <sup>2</sup> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by  
25 an impartial jury of the State and district wherein the crime shall have been committed, which  
26 district shall have been previously ascertained by law, and to be informed of the nature and  
27 cause of the accusation; to be confronted with the witnesses against him; to have compulsory  
28 process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his  
defense.

1 complex that showed Mr. Simpson and Mr. Soofi carrying baggage out of their  
2 apartment on the Friday before the attack. The government claims that the FBI agent in  
3 charge of the investigation into Mr. Kareem was not aware of the surveillance that was  
4 done in the weeks prior to the attack by FBI agents who sat in the same office, on the  
5 same floor as he occupied, and that they never disclosed the surveillance of Simpson  
6 nor the pole camera to him. All of this coupled with the trial experience of late  
7 disclosures, discloses a troubling pattern that warrants court intervention to compel the  
8 requested disclosures.  
9  
10

11 No defense attorney wants to prepare a defense for a planned proceeding, only to  
12 find once the proceeding begins that he is confronted with recently disclosed evidence  
13 that he did not have time to prepare to challenge. The requested information is material  
14 and relevant to the preparation of the defense. It should have been produced already.  
15

### 16 **3. Legal Analysis**

17 Cases make clear that documents or other objects within the possession of the  
18 government are discoverable prior to trial under Fed. R. Crim. P. 16(a)(1)(E).<sup>3</sup> See  
19 *United States v. Trevino*, 556 F.2d 1265, 1272 (5th Cir. 1977) (finding prosecutor's  
20 duty to disclose under Rule 16 extends to material within custody or possession of  
21  
22  
23

---

24 <sup>3</sup> Fed. R. Crim. P. (a)(1)(E) *Documents and Objects*. Upon a defendant's request, the  
25 government must permit the defendant to inspect and to copy or photograph books, papers,  
26 documents, data, photographs, tangible objects, buildings or places, or copies or portions of  
27 any of these items, if the item is within the government's possession, custody, or control and:

- 28 (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial; or
- (iii) the item was obtained from or belongs to the defendant.

1 “investigative agency” when government has ready access to materials requested);  
2 *United States v. Santiago*, 46 F.3d 885, 894 (9th Cir. 1995) (finding United States  
3 Attorney’s Office had knowledge of, and access to, inmate files held by the Bureau of  
4 Prisons); *United States v. Wood*, 57 F.3d 733, 735 (9th Cir. 1995) (finding a *Brady*  
5 violation when the prosecution failed to turn over certain reports of the FDA bearing on  
6 the safety of the drugs the defendant unlawfully dispensed because, “for *Brady*  
7 purposes, the FDA and the prosecutor were one”); *United States v. Bryan*, 868 F.2d  
8 1032, 1036 (9th Cir. 1989) (holding Rule 16 includes out-of-district documents in the  
9 possession, custody, or control of any federal agency participating in the investigation  
10 of the defendant which prosecutor had knowledge of and to which prosecutor had  
11 access). In *United States v. Clegg*, 846 F.2d 1221, 1224 (9th Cir. 1988), the court  
12 allowed discovery of classified documents because they were relevant to a mistake of  
13 law defense.

14  
15 While a specific or detailed request is helpful, a defendant cannot make such a  
16 request where he has little or no information regarding the precise nature or existence of  
17 documents or tangible objects. *See* Fed. R. Crim. P. 16 advisory committee’s note  
18 (1974 amendments) (“It may be difficult for a defendant to make this showing [of  
19 materiality] if he does not know what the evidence is.”)

20  
21 When there is room for doubt regarding whether evidence in the government’s  
22 possession is exculpatory, the defendant may argue that it is improper for the prosecutor  
23 to decide what constitutes exculpatory evidence. *See, e.g., Dennis v. United States*, 384  
24  
25  
26  
27  
28

1 U.S. 855, 875 (1966) (holding determination of what may be useful to the defense can  
2 properly and effectively be made only by an advocate).

3 Due process requires that, when a court relies on documents other than the PSR  
4 for sentencing, the documents be shown to the defense counsel with sufficient time to  
5 afford a meaningful opportunity to respond. *US v. Nappis*, 243 F.3d 758, 772 (3<sup>rd</sup> Cir.  
6 2001) and *US v. Davis*, 636 F.3d 1281, 1295 (10<sup>th</sup> Cir. 2011). This rational should  
7 apply to witnesses that the government intends to call at sentencing.  
8

9 At sentencing, if the government calls witnesses, the defendant must be  
10 permitted to test the witnesses' credibility. *US v. Nickle*, 816 F.3d, 1230, 1235-37 (9<sup>th</sup>  
11 Cir. 2016). Also, a criminal defendant has the right to be present during all aspects of  
12 the criminal proceedings and this stems from both the Due Process Clause of the Fifth  
13 Amendment and Confrontation Clause of the Sixth Amendment. The Confrontation  
14 Clause guarantees a defendant the right to be present at any stage that would contribute  
15 to the opportunity of effective cross -examination. *Ky v. Stincer*, 482 US 730, 740, 745  
16 n 17 (1987). The cumulative effect of these two guarantees entitles the defendant to be  
17 present at all critical states of the proceedings. *Id.* at 745; Fed. R. Crim. P. 83.<sup>4</sup>  
18  
19

20 There is a separate and independent basis for disclosure. Disclosure of  
21 information is also required under the Fifth Amendment. *Brady v. Maryland*, 373 U.S.  
22 83, 87 (1963). The prosecutor in a criminal case must disclose to the defendant all  
23 exculpatory material, that is, all evidence that is favorable to the accused. *Id.* The  
24  
25

---

26  
27 <sup>4</sup> Unless this rule, Rule 5 or Rule 10 provides otherwise, the defendant must be present at ....  
28 (3) sentencing.

1 evidence must be “material” for *Brady* purposes. In *United States v. Bagley*, 473

2 U.S.667 (1985) the Supreme Court explained that evidence is material:

3 “only if there is a reasonable probability that, had the evidence been  
4 disclosed to the defense, the result of the proceeding would have been  
5 different. A ‘reasonable probability’ is a probability sufficient to  
undermine confidence in the outcome.”

6 *Bagley*, 473 U.S. at 682.

7  
8 In *Kyles v. Whitley*, 514 U.S. 419 (1995), the Supreme Court clarified that:

9 “*Bagley*’s touchstone of materiality is a ‘reasonable probability’ of a  
10 different result, and the adjective is important. The question is not  
11 whether the defendant would more likely than not have received a  
12 different verdict with the [suppressed] evidence, but whether in its  
absence he received a fair trial, understood as a trial resulting in a verdict  
worthy of confidence.”

13 *Kyles*, 514 U.S. at 434.

14  
15 A review of the items requested in Exhibit 1 demonstrates they are specific and  
16 seek disclosure of information that would be useful in preparing a defense or could lead  
17 to disclosure of such information.

18  
19 **4. Conclusion**

20 The information requested is material to the defense and should be disclosed.  
21 Late disclosures hamper Mr. Kareem’s ability to confront the witnesses the government  
22 plans to use against him and his lawyers’ ability to effectively cross-examine these  
23 witnesses.  
24



1 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of September, 2021.

2 **MAYNARD CRONIN ERICKSON &**  
3 **CURRAN, P.L.C.**

4 By /s/Daniel D. Maynard

5 Daniel D. Maynard  
6 3200 North Central Avenue, Ste. 1800  
7 Phoenix, Arizona 85012  
8 Attorneys for Defendant/Appellant

8 **DRAKE LAW, PLC**

9 By /s/Daniel R. Drake

10 Daniel R. Drake  
11 4340 East Indian School Road  
12 Suite 21-113  
13 Phoenix, Arizona 85018  
14 Attorney for Defendant/Appellant

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on September 10, 2021, I electronically transmitted the  
16 attached document to the Clerk's Office using the CM/ECF System for filing and  
17 transmittal of a Notice of Electronic Filing to CM/ECF registrants: AUSA Joseph E.  
18 Koehler and AUSA Kristen Brook. Additionally, a copy was served upon Mr. Abdul  
19 Kareem by first class letter, postage prepaid, at:  
20

21  
22 Abdul Malik Abdul Kareem #44126-408  
23 FCI Phoenix  
24 Federal Correctional Institution  
25 37910 N 45th Ave  
26 Phoenix, AZ 85086

26 /s/Rosalie Mobley  
27 Rosalie Mobley  
28